

A New Castle City Board of Adjustment Hearing took place on August 17, 2011 at 7 p.m. in the City of New Castle's Town Hall.

Present: William J. Barthel, City Council President*
Daniel R. Losco, City Solicitor
David J. Athey, City Engineer

City Personnel: Jeff Bergstrom, City Code Official

*President Barthel is representing Mayor Donald Reese.

President Barthel called the meeting to order at 7:05 p.m. Roll call was taken. Mr. Losco noted for the record that he has represented the Gambacorta family in the past and will be recusing himself from deliberations in this matter, but will be available for legal or procedural questions that may arise.

President Barthel read the Notice of Public Hearing that states, "An application has been filed by Anthony & Pauline Gambacorta, 315 East 14th Street, New Castle, Delaware, requesting a variance from lot area from 1700 square feet per family to allow the reconfiguration of three building lots into two building lots and a variance to the required rear yard from 25 feet to 20 feet to allow the construction of uncovered stoops and steps for proposed construction on the two newly created lots at property located at 401, 403, and 405 Williams Street, New Castle, Delaware, parcel numbers 21-015.30-074, 075, and 076.

For the purpose of considering this application, the Board of Adjustment will hold a Public Hearing on Wednesday, August 17, 2011, at 7 p.m. in Old Town Hall, 2nd Floor, located at 2nd and Delaware Streets, New Castle, Delaware."

An affidavit of publication was published in the News Journal and the New Castle Weekly. Mr. Bergstrom testified the property has been properly posted.

Mr. Carmine Casper, civil engineer with Howard Robertson, Inc., informed they are making application for two variances, lot area and rear setback. The side and front yard setbacks were previously approved by the Historic Area Commission.

Mr. Athey asked why the applicant doesn't build three houses if there are three lots. Mr. Casper informed the existing three lots are too small to build a reasonably-sized house. They believe it would be better to build two houses (22 ft. wide) than building three odd-sized homes. The lots have been in existence for a period of time.

Mr. Athey also noted they could create a single lot and build one home and not need a variance. Mr. Casper said they would need HAC approval for setbacks but would not need the BOA, unless they wanted to have a rear step then they would need a rear yard setback variance.

Mr. Athey reviewed the provisions in Section 230-57.C 1(A) of the Zoning Code.

Special conditions and circumstances exist which are peculiar to the land, structure, or buildings involved and which are not applicable to other lands, structures, or buildings in the same district. Mr. Athey expressed concern with understanding the uniqueness of this situation.

Literal interpretation of the provisions of this Code would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Code.

The special conditions and circumstances do not exist because of actions by the applicant. Mr. Casper said creating the lot to meet the variance would be the action of the applicant. However, not enlarging the lots would create a practical difficulty in obtaining a mortgage for the smaller lots (11 ft.). He believes this is a unique situation. Historic New Castle has no specific type of building; every building is different.

Mr. Athey asked Mr. Losco to provide legal guidance concerning the provision stating, “special conditions and circumstances do not result from the actions of the applicant.” He added the applicant didn’t create an 11 ft. wide lot, but the applicant could avoid coming before the Board of Adjustment if they were willing to create a single lot and a single house. Mr. Losco advised that the applicant has the right to build on three lots but at least one of those lots has no economic utility. Forcing them to give up two of the three lots creates more hardship on the applicant and forces them to give up one of the two lots they propose.

Mr. Athey’s interpretation of Mr. Losco’s statement is that by forcing the applicants to go with a single lot and a single home would be an undue hardship because they have three lots that are unbuildable, or build one house on one over-sized lot that is out of character for the owner. Mr. Losco added that what is being proposed is two 1,572 sq. ft. lots where the code requires 1,700 sq. ft. lots. One of the things this Board looks at in a variance is that the request for dimensional change is minimal in nature. This factor should also be considered.

Granting the variance requested will not convey on the applicant any special privilege that is denied by this Code to other lands, structures, or buildings in the same district. Mr. Casper noted there are many lots in the area that are less than 1,700 sq. ft. so it is not out of character for the area.

Mr. Bergstrom stated the applicant is within their rights to combine the two smaller lots, build a single family home and an up and down bevel on the other two without appearing before the Board of Adjustment, except for a porch variance. He thinks what is being proposed is a responsible decrease in acceptable density to reconfigure the lots and build a double house which is worth more than splitting the lots. The applicant could also combine the lots and build a duplex and have the same duplex without a subdivision, but this is an economic hardship. The property does not require off-street parking and the area variance is minor (1,700 sq. ft. down to 1,572 sq. ft.). The minutes of the Historic Area Commission reflect the granting of it and state their preference to move the house back 4 ft. from the street from the edge of the right-of-way, which mandates the rear stoop even though it is uncovered. Considering all these conditions, he believes from a building permit point of view the request is reasonable.

Mr. Athey made a motion to grant the variance and require the rear yard of 25 ft. to 20 ft for the reason that most other jurisdictions would be a matter of right citing the uniqueness of the uncovered stoop would account for the setback and the variance request is inconsequential. Mr. Barthel seconded the motion and cited for the same reasons outlined by Mr. Athey and the brief statement by Mr. Bergstrom. The motion was approved.

Mr. Athey made a motion to grant the area variance from 1,700 sq. ft. to 1,572 sq. ft. The applicant has successfully demonstrated that the conditions and circumstances that exist are peculiar to the land, mostly that the lots as configured today are unbuildable. The literal interpretation of the provisions of the Code would deprive the applicant of rights to develop their land. The special conditions and circumstances are not the result of actions by the applicant since the lots were configured many years ago. The granting of the variance will not convey on the applicant any special privilege that is denied by this Code to other lands, structures, or buildings in the same district. Further, the variance request is less than 10%, which is a minimal variance. Mr. Barthel seconded the motion citing the same reasons stated by Mr. Athey. The motion was approved.

The hearing was adjourned at 7:20 p.m.

Respectfully submitted,

Debbie Turner

Debbie Turner
Stenographer